

## IS PRE-EMPLOYMENT TESTING LEGAL?

From time to time I get asked the question, “What are the legal issues surrounding pre-employment assessments?” As we haven’t addressed this topic since Newsletter #35, back in August, 2004, I thought this would be a good time for a review, especially in light of the recent *Karraker vs. Rent-A-Center* case in the U.S.

In today’s newsletter we will provide a quick overview of some of the key points surrounding pre-employment assessment and testing instruments put forth in the U.S. Department of Labor’s Equal Employment Opportunity Commission Guidelines. I am using the EEOC guidelines, as Canadian companies tend to look south of the border for direction on legal issues regarding testing.

In response to our opening question, yes, employment testing is legal and it is used by most Fortune 500 companies. But there are three key concepts that you need to be familiar with to ensure that your pre-employment testing tools and methods are above-board.

The first is “adverse impact”. The test should not adversely impact any special population, such as a minority, gender, or, as recently demonstrated in the *Karraker vs. Rent-A-Center* case, people with disabilities. In this instance, it was demonstrated that the instrument used by Rent-A-Center, the Minnesota Multiphasic Personality Inventory (MMPI), was, in fact, a medical “test” that violated The Americans with Disabilities Act. If you Google MMPI you will note that many of the sites that offer this assessment state specifically that it is used by clinicians to assist with the diagnosis of mental disorders. What led Rent-A-Center to use a test for mental disorders in the hiring process? We don’t know, but the message to test-users is clear. Read your test developer’s technical manual to get a better understanding of everything the test measures. Also, take a quick look at the questions that it asks. If it asks the candidate to evaluate statements such as “my soul sometimes leaves my body”, you need to reconsider your company’s use of this test.

The second concept is “job-relatedness”. The assessment must measure dimensions that are related to success in the job. For example, if you use an assessment that measures competitiveness, your company shouldn’t have too much difficulty making a case for using it to assess sales candidates. Better yet, follow best practices and benchmark the assessment by assessing your top sales people. Another good step is to use a job analysis tool that helps define critical success factors. This not only proves job-relatedness beyond any doubt, but it helps clearly define the qualities you are looking for in the selection process and leads to smarter hiring decisions.

The third concept is validity and reliability. The assessment should be valid – it should measure what it purports to measure. For, example, if the assessment says that someone is competitive, is the person really competitive? Does their supervisor think that s/he is? Do other validated assessments say the same thing?

The test should also be reliable – a person shouldn’t be assessed as competitive this week and submissive next week. Once again, by checking your test developer’s technical manual you should be able to confirm your test’s validity and reliability.

In summary, by following a few simple guidelines you can reap the benefits of employment testing while protecting your organization in the unlikely event that you should be challenged. Review your test developer’s technical manual to ensure that the test is valid, reliable, job-related and does not adversely impact and special populations.

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